



'Whistleblowing and the role of the Chair and board'
Write-up of the PCF seminar with Cathy James, Chief Executive of Public Concern at Work
Thursday 5th December, 4- 5.30 pm
2 Carlton Gardens, London

At this seminar, Cathy James, CEO of Public Concern at Work talked about whistleblowing and the important role that Chairs and board members have to play. The report by the Whistleblowing Commission, published on 27 November, served as a basis for the session. This was followed by a general discussion and Q and A.

Presentation from Cathy James, CEO of Public Concern at Work

PCaW

PCaW is an independent charity, founded in 1993. They provide free confidential advice to those concerned about wrongdoing in the workplace, train organisations on policy and law of whistleblowing, campaign on public policy, and promote public interest whistleblowing laws.

PCaW definition of 'whistleblowing'

Raising a concern about wrongdoing, risk or malpractice with someone in authority either internally and/or externally (i.e. regulators, media, MPs)

Experience of whistleblowing

- People have three options when they are concerned about malpractice:
 - Keep quiet
 - Raise internally
 - Go outside
- Often personal relationships effect whistleblowing but it's important to focus on the message, not the messenger.
- PCaW and Greenwich University's report, *Whistleblowing: The Inside Story. A study of the experiences of 1000 whistleblowers* (May 2013), found:
 - 83% of whistleblowers blow the whistle up to two times, usually internally.
 - 15% of whistleblowers raise a concern externally. On the third attempt, 60% still use internal options. Only 22/1000 individuals raised a concern four or more times. Half of these went outside their organisation.
 - 74% of whistleblowers say nothing is done about the wrongdoing.
 - 60% of whistleblowers receive no response from management.
 - The most likely response is formal action (disciplinary or demotion) (19%).
 - 15% of whistleblowers are dismissed.

- Senior whistleblowers are more likely to be dismissed.
- Newer employees are most likely to blow the whistle (39% have less than two years' service).
- The Public Interest Disclosure Act 1998 promotes and protects open whistleblowing.

Whistleblowing Commission Report

The Whistleblowing Commission was set up independently from PCaW in February 2013 to examine the effectiveness of existing arrangements for workplace whistleblowing in the UK.

Their code of practice includes:

- Confidentiality will be maintained where requested.
- Clear assurances are given to staff about protection from reprisal.
- Specific individuals have responsibility for the arrangements.
- There is a need for greater oversight of whistleblowing arrangements by non-executive directors or equivalent;].
- There is a review of the effectiveness of the arrangements.
- Key data around review is publicised.

Advice for regulators:

- Regulators should have a clear procedure for dealing with whistleblowers.
- Feedback to the individual is vital (where possible).
- Whistleblowing in regulatory annual reporting mechanisms, including in accountability hearings before parliament.
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Recommendations:

- Financial rewards or incentives for whistleblowing should not be introduced.
- Simplification of PIDA including a non-exhaustive list of the types of 'public interest' information
- Additional categories of wrongdoing (gross waste or mismanagement of funds and serious misuse or abuse of authority).
- Broader scope of workers including those wrongly identified as whistleblowers
- Clearer anti-gagging provisions.
- When workers receive advice from an independent adviser on settlement, they also receive advice about the effect of anti-gagging provisions.
- Specialist training for ET judges.
- Power of ET to make recommendations.
- Referral of claim forms to regulators.

Summary of discussion

Definition

- PCaW keep the definition of 'malpractice' broad. Sometimes this can include incompetence. It is important to illustrate the behaviour involves 'risk.'
- There is a difference between complaints and whistleblowing so they need different procedures. A complaint is usually disciplinary and an individual process.

The role of the Chair and board members in whistleblowing

- Although the legal status of board members of public bodies is different to those of charities and trust boards, the public enquiry into Mid Staffordshire NHS Foundation Trust Public suggested individual responsibility at board level and accountability can build confidence.
- Some organisations may hide behind a whistleblowing policy while some well-managed organisations may feel they don't need one. However, leadership is key and having a policy is useful for communication.
- It's difficult to know if no concerns are raised because there are really no concerns or if there is a culture of silence – it's important to sense check within your organisation. You can start to benchmark against your own organisation once your whistleblowing process has matured.
- Organisations will need different approaches to find the balance between the Chair and board being visible but not being involved in every case. The code of practice outlined above will be useful for this. The policy should be looked at in the context of other issues every 6 months to a year by the board.

Other points

- It's important the policy corresponds with an open culture – it should not become a box-ticking exercise. For example, some Chairs found referral units prevented a cultural change.
- Only three countries in Europe have comprehensive whistleblowing protection. The UN's work on anti-corruption overlaps with issues surrounding whistleblowing.

Cathy concluded that whistleblowing is a board issue and that if Chairs did only one thing; they should ask their executives what they are doing about whistleblowing.